

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

IN RE:	§	
	§	
ADOPTION OF PROCEDURES GOVERNING	§	Entered April 20, 1989
MODERATED SETTLEMENT OF CONTESTED	§	
MATTERS AND ADVERSARY PROCEEDINGS	§	
IN BANKRUPTCY CASES	§	GENERAL ORDER NO. <u>89-12</u>

1.0 PRELIMINARY

The Court finds that the volume of cases and adversary proceedings filed in this District has placed substantial burdens upon counsel, litigants and the Court. The Moderated Settlement Conference (MSC) program sponsored by the Houston Bar Association in which litigants and counsel come together with an independent moderator, offers an opportunity to settle legal disputes with less cost or time, and to the satisfaction of all the parties. In addition, it offers to the Court the prospect of some relief from the heavy and constantly increasing caseload. This General order is accordingly adopted for these purposes.

2.0 REGISTER OF VOLUNTARY ATTORNEYS

2.1 The Houston Bar Association shall establish and maintain a register of qualified attorneys who have volunteered to serve, without compensation, as moderators in contested matters and adversary proceedings in cases pending in the Bankruptcy Court.

2.2 In order to qualify for service as a moderator under this rule, an attorney shall meet the following minimum qualifications:

a. Be an active member of the State Bar of Texas, duly licensed to practice before the courts of the State of Texas and the Federal Courts for the Southern District of Texas;

b. Have been admitted to practice in a state court for at least four (4) years;

c. Have served as the attorney of record for at least three (3) bankruptcy cases from commencement through conclusion (i.e., confirmation of a

plan or discharge); (or} alternatively,

d. Have served as the attorney of record for a party in interest for at least three (3) or more adversary proceedings or contested matters from commencement through completion (i.e., judgment, order or stipulated settlement).

3.0 **REFERRAL TO MODERATED SETTLEMENT CONFERENCES.**

3.1 A case may be referred to MSC only upon consent of the parties and by order of the Court at a status conference or other hearing. If a case is to be referred to MSC, the parties attending the status conference shall be presented with a form order referring the matter to MSC. Referral to MSC does not abrogate or supersede existing scheduling orders that may have been entered in the case.

3.2 Form of Order.

The Court's order referring a matter to MSC shall be in the form attached hereto (**Exhibit "A"**). The original shall be retained in the Court's file. One copy shall be mailed to the Houston Bar Association MSC Coordinator and one copy to each party.

4.0 **MODERATED SETTLEMENT CONFERENCE**

4.1 Moderator Panel; Time and Place of Conference.

The MSC Coordinator of the Houston Bar Association will assign a panel of moderators, shall fix a time and place for the moderator's conference, and all adjourned sessions, that is reasonably convenient for the parties.

4.2 Submission of Case Summaries.

Each party shall provide the moderator panel with a case summary in the format and at the time prescribed by the Houston Bar Association.

4.3 Attendance and Preparation Required.

The attorney who is Primarily responsible for each party's case shall personally attend the MSC and any adjourned sessions of that conference. The attorney for each party shall come prepared to discuss the following matters in detail and in good faith:

- a. All liability issues;
- b. All damage issues; and

C. The position of his/her client relative to settlement.

4.4 Parties to Re Available.

All individual parties shall personally attend the MSC. Parties, other than individuals, shall have a representative appear with authority to negotiate. The moderators will decide when the parties are to be present in the conference room.

4.5 Failure to Attend.

Willful failure to attend the MSC shall be reported to the Court by the MSC Coordinator and may result in the imposition of sanctions by the Court.

4.6 All proceedings or writings of the MSC, including the case summary, moderator's opinion, plus any statement made by any party, attorney or other participant, shall in all respects be privileged and not reported, recorded, placed in evidence, made known to the trial court or jury or construed for any purpose as an admission against interest. No party shall be bound by anything said or done at the conference unless a settlement is reached, in which event the agreement upon a settlement shall be reduced to writing and shall be binding upon all parties to that agreement. Federal Rule of Evidence 408 applies herein.

4.7. If the moderators make any oral or written suggestions as to the advisability of a change in any party's position with respect to settlement, the attorney for that party shall promptly transmit that suggestion to his client.

5.0 **PROCEDURE UPON COMPLETION OF MSC**

5.1 Upon the conclusion of the MSC, the following procedure shall be followed:

If the MSC has been concluded and is successful in that the parties have reached an agreement regarding the disposition of the proceeding, the parties shall determine who shall prepare and submit any motions or documentation necessary for disposition of the case by the Court. Within ten (10) days from the conclusion of the MSC, the MSC Coordinator shall file a certificate of conference indicating the matter has been settled (**Exhibit "B"**).

b. If the MSC has been concluded and the parties have not reached

an agreement regarding disposition of the proceeding, the MSC Coordinator shall within ten (10) days after the MSC file a certificate of conference indicating the matter has not been settled (**Exhibit "B"**).

6.0 IMPLEMENTATION

The foregoing Procedures Governing Moderated Settlement of Contested Matters And Adversary Proceedings in Bankruptcy Cases shall become effective on April 19, 1989, and shall apply to all bankruptcy cases and related adversary proceedings filed or pending on or after that date.

DATE SIGNED:

_____/s/_____
R. F. WHELESS, JR.
Chief Judge
U. S. Bankruptcy Court

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

In Re: _____
Debtor

Bankruptcy Case No. _____

(Adversary Style and Number,
if applicable)

Plaintiff

VS.

Adversary Case No. _____

Defendant

ORDER OF REFERRAL TO
MODERATED SETTLEMENT CONFERENCE

The parties and their attorneys have consented to referral of this matter to an alternative dispute process , specifically the Moderated Settlement Conference sponsored by the Houston Bar Association. The matter concerns:

- () Dischargeability,
() Objection to Claim,
() Lien Avoidance,
() Other _____
_____.

The attorneys for the parties are:

Plaintiff's Attorney

Defendant's Attorney

Address

Address

Telephone No.

Telephone No.

EXHIBIT A

- 6 -

IT IS ORDERED that this matter is referred to Moderated Settlement Conference pursuant to Standing Order _____.

SIGNED this _____ day of _____, 19____.

UNITED STATES BANKRUPTCY JUDGE

- 7-

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

In Re: _____
Debtor

Bankruptcy No. _____

Plaintiff

VS.

Adversary No. _____

Defendant

CERTIFICATE OF CONFERENCE

I, _____, MSC Coordinator for the Houston Bar
Association, state:

1. Date of MSC: _____

Continued Date: _____

(If Applicable)

2. The Rules governing moderated settlement have _____
have not _____ been complied with.
3. A settlement of this matter has _____ has not _____
been reached.
4. If settlement has been reached, _____
(plaintiff/defendant) shall prepare the stipulation
for settlement.

DATED: _____

Moderator Coordinator

EXHIBIT B